STANDARD PROCUREMENT AGREEMENT

CONTRACT NUMBER

FILE NUMBER(S)

THIS AGREEMENT is entered into this _____ day of _____2010, in the State of California by and between San Diego Metropolitan Transit System, a California public agency, and the following contractor, hereinafter referred to as "Contractor":

Name: _____ Address: _____

Form of Business: _____
(Corporation, partnership, sole proprietor, etc.)

Telephone: _____

Authorized person to sign contracts: _____
Name Title

The attached Standard Conditions are part of this Agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: _____ Chief Executive Officer	Firm: _____
Approved as to form:	By: _____ Signature
By: _____ Office of General Counsel	Title: _____

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
$		

By: _____
Chief Financial Officer Date

SA-PROCUREMENT (Rev 05-09)

(___ total pages, each bearing contract number)

DATE

STANDARD CONDITIONS
PROCUREMENT

1. COMPLETE AGREEMENT

This Agreement, including all applicable terms, conditions, and specifications, shall constitute the sole and exclusive agreement between the parties. This Agreement supersedes all other writings and is expressly conditional upon Contractor's agreement to the conditions hereof, and nothing shall be construed to be an acceptance of any terms of Contractor.

2. CHANGES

MTS may direct, in writing, changes, including changes to the quantities originally ordered, specifications, or drawings. No change in unit prices or an extension of time shall be granted to Contractor for minor quantity variations. Major variations of quantities may be negotiated between MTS and the Contractor, in the sole discretion of MTS.

Contractor shall assert any claims for adjustment which would result from the implementation of MTS's comments on Contractor's technical documents within 30 calendar days from the date of Contractor's receipt of such comments, and no adjustment will be made hereunder unless MTS confirms the change by a written revision after mutual agreement between MTS and the Contractor.

However, nothing herein shall excuse Contractor from proceeding with the Agreement, as changed, prior to negotiation of the equitable adjustment.

3. PRICE AND PAYMENT

The total price herein specified, unless otherwise expressly stated, shall include all taxes of any kind which either party is required to pay with respect to the sale of the goods covered by this Agreement, including sales and use taxes, and shall include all charges and expenses for customs duties, freight charges, inspection, testing, packaging and loading unless specifically excluded.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

4. DELIVERY

Timely performance and deliveries are essential to this order. However, Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor's reasonable control, without Contractor's fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events which will be excusable for being beyond Contractor's reasonable control only upon fulfillment of the following conditions: (a) within seven (7) calendar days of the commencement of any excusable delay, Contractor shall provide MTS with written notice of the cause and extent

thereof, as well as request for a schedule extension for the estimated duration thereof; and (b) within seven (7) calendar days of the cessation of the event causing delay, Contractor shall provide MTS with written notice of the actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

5. SUSPENSION

Notwithstanding any other provisions of this Agreement, MTS may suspend or extend the time for Contractor's performance at any time, from time to time, upon ten (10) calendar days prior to written notice of such suspension or extension. Thereafter, Contractor shall resume performance as directed by MTS. In the event of such suspension or extension, Contractor shall be entitled to reimbursement for additional costs reasonably and necessarily incurred by Contractor directly attributable to such suspension or extension period to the extent that such additional costs are actually incurred. Contractor shall submit such documentation, as MTS may deem necessary to substantiate any such costs actually incurred. MTS will make the final determination of the validity of any claim for reimbursement and the amount, if any, thereof.

6. NONWAIVER

Failure of MTS to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law, or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design shall not release Contractor from any of the warranties or obligations of this Agreement and shall not be deemed a waiver of any right of MTS to insist upon strict performance hereof, or any of its rights or remedies as to any such good, regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this Agreement by MTS operate as a waiver of any of the terms hereof. A requirement that a Contractor's document is to be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comments," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain resolution of any comments, and obtain written authorization from MTS to proceed, and shall not mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

7. QUALITY STANDARDS

Except as otherwise expressly provided herein, Contractor shall be responsible for all inspection and testing, and agrees to strictly follow the standards of quality specified by MTS in addition to those customary in the industry. MTS shall be afforded free access to plants of Contractor and its suppliers in order to make surveillance inspections to monitor compliance with contractual quality requirements, and MTS's right to inspect, examine, and test the goods shall extend through the manufacturing process, the time and shipment, and a reasonable time after arrival at the ultimate destination. Contractor's failure to adhere to the standards of quality required under this Agreement shall be deemed to be reasonable grounds for insecurity justifying a written demand from MTS that Contractor provide adequate assurance of Contractor's ability to meet said standards.

Goods shall not be deemed accepted until finally inspected and examined at final destination.

The making or failure to make any surveillance inspection or examination of, payment for, or acceptance of the goods shall in no way impair MTS's right to reject nonconforming goods, or to avail itself of any other remedies to which MTS may be entitled, notwithstanding MTS's knowledge of the nonconformity, its substantiality, or the ease of its discovery.

8. EXPEDITING

The goods furnished under this Agreement shall be subject to expediting by MTS. MTS shall be afforded free access to Contractor's shops, factories, or places of business, and those of Contractor's suppliers, for expediting purposes. As required by MTS, Contractor shall supply schedules, unpriced copies of purchase orders and progress reports for MTS's use in expediting.

9. WARRANTIES-GUARANTEES

Contractor warrants that the goods shall be new, free from liens and defects in design, materials, workmanship, and title, and shall conform in all respects to the terms of this Agreement and to the drawings issued for manufacture by Contractor, and shall be of the best quality, if no quality is specified. Unless the warranty period is otherwise extended, the warranty shall apply. If, within one year from the date of commercial operation for the purpose for which the goods were purchased, or 18 months from the date of final delivery, whichever comes first, it appears that the goods, or any part thereof, do not conform to these warranties, and MTS so notifies Contractor within a reasonable time after its discovery, Contractor shall thereupon promptly correct such nonconformity to the satisfaction of MTS, at Contractor's sole expense, failing which MTS may reject and cover by purchasing substitute goods or MTS may proceed to make corrections or accomplish Contractor's performance by the most expeditious means available, the costs of cover or correction shall be for Contractor's account. Contractor's liability hereunder shall extend to all damages such as demand inspection, costs of return or warehousing. Contractor shall not be liable for consequential damages, such as loss of profit, loss of use or production, or costs of capital. NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY.

10. INFRINGEMENT

Contractor shall, at its own expense, hold harmless and defend MTS and its representatives under this Agreement against any claim, suit, or proceeding brought against MTS or their representatives, which is based upon a claim, whether rightful or otherwise, that any goods, process or material, or any part thereof, furnished by Contractor under this Agreement, constitutes an infringement and/or if the use of any such goods, process or material is enjoined, Contractor shall, at its sole expense, subject to the following provisions, either procure for MTS an irrevocable, royalty-free license to continue using such goods, process or material, or with MTS's prior written approval, replace same with substantially equal but noninfringing equipment or modify it so it becomes noninfringing, provided that no such replacement or modifications shall in any way amend or relieve Contractor of its warranties and guarantees set forth in this Agreement.

The preceding paragraph(s) shall not apply to any goods, or any part thereof, manufactured to MTS's detailed design. As to such goods or part, the Contractor assumes no liability whatsoever for patent infringement.

This indemnity is given upon the condition that MTS shall promptly, after receiving notice thereof, notify Contractor of any claim or suit or proceeding involving MTS in which such infringement is alleged, and MTS shall permit Contractor to control completely the defense or compromise of such allegation of infringement, and MTS shall render such reasonable assistance at Contractor's cost in the defense thereof as Contractor may require.

11. ASSIGNMENT

Any assignment of this Agreement or of any rights hereunder of hypothecation thereof in any manner, in whole or in part, without the prior written consent of MTS shall be null and void. Notwithstanding the foregoing, Contractor may assign monies due or to become due under this Agreement, and such assignments will be recognized by MTS, provided that written notice thereof is given to MTS at least ten (10) calendar days before payment is due. Any assignment of monies shall be subject to proper setoffs in favor of MTS to all deductions provided for in this Agreement. All money withheld, whether assigned or not, shall be subject to being used by MTS for the completion of the Agreement, in the event Contractor should be in default therein.

12. TERMINATION FOR CONVENIENCE

Performance under this Agreement may be terminated by MTS in accordance with this clause in whole or, from time to time, in part, whenever MTS shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this Agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

A. immediately discontinue performance on the date and to the extent specified in the notice;

B. place no further orders for materials other than as may be necessarily required for completion of such portion of the Agreement that is not terminated;

C. promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS's concurrence assign to MTS those orders; and

D. assist MTS, upon request, in the maintenance, protection, and disposition of property acquired by MTS under this Agreement.

If claimed in writing within 30 calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

A. all amounts due and not previously paid to Contractor for goods completed in accordance with this Agreement prior to such notice;

B. a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;

C. costs of settling and paying supplier's claim arising out of the canceled orders; and

D. a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire Agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

13. TERMINATION FOR DEFAULT

MTS may terminate the whole or any part of Contractor's performance in any one of the following circumstances:

A. if Contractor fails to make delivery or fails to perform within the time specified herein or any extension thereof; or

B. if Contractor delivers nonconforming goods; or

C. if Contractor fails to perform in accordance with the provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms.

In the event of any such failure, MTS will provide Contractor with notice of the nature of the failure and MTS's intention to terminate for default. In the event Contractor does not cure such failure within ten (10) calendar days of such notice, MTS will provide Contractor with written Notice of Termination for Default.

In the event MTS terminates as provided herein, MTS may procure, upon such terms, and in such manner as MTS may deem appropriate, supplies or services similar to those so terminated, and Contractor shall be liable to MTS for any excess costs for such similar supplies or services; and Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this clause.

In the event of Contractor's default, Contractor agrees to mitigate damages by cooperating with MTS in transferring information and disposing of goods in process or MTS's materials as MTS may reasonably request. If after Notice of Termination for Default it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the Termination for Convenience clause.

14. SURVIVAL

Notwithstanding MTS's acceptance of the goods and payment therefore, Contractor shall remain obligated under all clauses of this Agreement which expressly, or by their nature, extend beyond and survive such acceptance and payment.

15. LANGUAGE AND MEASURE UNITS

Unless specified otherwise, manuals, specifications, drawings, plans, purchase orders, subcontract documents, and invoices submitted in accordance with this Agreement shall be in metric ("Systems International d' Units," or "SI units") with the United States equivalents clearly shown.

16. APPLICABLE LAW-DEFINITIONS

The definition of terms used, interpretation of this Agreement, and rights of all parties hereunder shall be construed under and governed by the law of the state of California, United States of America. "MTS" means the San Diego Metropolitan Transit System (MTS) or its designee. "Contractor" means the person, firm, or corporation to which this Agreement is addressed. "Goods" means those articles, materials, supplies, drawings, data, and other property, and all services, including design, delivery, installation, inspection, testing, and expediting, specified or required to furnish the goods ordered by this Agreement.

17. STANDARDS AND CODES

Whenever references are made in the Agreement to standards or codes in accordance with which the goods are to be manufactured or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes.

In case of conflict among any referenced standards and codes, or between any referenced standards and codes and the Technical Specifications, MTS will determine which will govern.

18. SUCCESSORS AND ASSIGNS

All terms, conditions, and provisions hereof shall inure to and bind hereto their and each of their respective heirs, executors, administrators, successors, and assigns.

Except as provided above, Contractor shall not sublet, assign, or transfer its interest in this Agreement without the prior written consent of MTS.

19. HOLD HARMLESS/INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under

this Agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

20. ATTORNEYS' FEES

In the event either party hereto finds it necessary to retain an attorney in connection with the default by the other in any of the agreements or covenants contained in this Agreement, or in the event of litigation regarding this Agreement, the losing party shall pay reasonable attorneys' fees to the prevailing party.

21. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MTS's Equal Employment Opportunity Program for Contractors is part of this Agreement (a copy can be obtained from MTS's Clerk of the Board). A Certificate of Compliance and a Workforce Report form signed by the Contractor is a condition for the award of this contract.

Each Contractor who provides MTS labor, equipment, materials and services of $50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity (EEO) Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract.

22. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION ***(applies to federally funded contracts only)***

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs." In order to ensure MTS achieves its federally mandated statewide overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with federal funds. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

As required by federal law, the California Department of Transportation (Caltrans) has established a statewide overall DBE goal that MTS must participate in as a condition of receipt of funding. In order to ascertain whether that statewide overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. To assist Proposers in ascertaining DBE availability for specific items of work, MTS advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project, and the likely DBE availability advisory percentage is **zero** percent. **MTS also advises that participation of DBEs in the specified percentage is not a condition of execution of this Agreement.**

Contractor shall be fully informed in respect to the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. Contractor's attention is directed to the following matters:

A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto.

B. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:

1. Caltrans' "Civil Rights" Web site at: http://www.dot.ca.gov/hq/bep.

2. Caltrans' DBE Directory This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.

F. When reporting DBE participation, the Contractor may count the cost of materials or supplies purchased from DBEs as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

4. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

G. When reporting DBE participation, the Contractor may count the participation of DBE trucking companies as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

6. For the purposes of paragraph 22(G), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

7. Prior to the fifteenth of each month, the Contractor shall submit documentation to MTS showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to MTS showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement. The Contractor shall also submit to MTS documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month.

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in

writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

23. PROMPT PAYMENT **[Choose either the first, OR second, OR third paragraph, then delete this line.]**

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted, including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CRF 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

OR this

A prime contractor or subcontractor shall pay any subcontractor no later than ten days from the receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The ten days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, deficient subcontractor performance, noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

OR this

(Use this provision for engineering, surveying, environmental, architectural, landscaping, or construction project management services when state or federal highway funds are being used per Mara Elliott, May 2001.)

No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with MTS's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specific in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime

contractor, or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

24. NONDISCRIMINATION BY CONTRACTOR

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as MTS deems appropriate.

25. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of California Government Code section 800 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing.

26. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

Attachment: Certificate of Compliance

CERTIFICATE OF COMPLIANCE
WITH MTS EQUAL OPPORTUNITY PROGRAMS AND DBE CONTRACTOR INFORMATION FORM

I hereby certify that, in performing under contract(s) or purchase order(s) awarded by the San Diego Metropolitan Transit System (MTS), I will comply with the provisions of MTS Equal Employment Opportunity Program, and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

DBE subcontractor participants are listed below. The successful bidder must execute and return this form even if no DBE participation will be reported:

Company Name and Address	Description of Work	Dollar Amount

If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE. I agree to make a good-faith effort to meet the goals of this plan as part of my contractual obligations to MTS.

Date: _____ Firm: _____

By: _____
Signature

Title: _____